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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,063	02/03/2004	Carlos M. Coro	66643.010100	2233
54353	7590	09/23/2005	EXAMINER	
MANUEL VALCACEL c/o GREENBERG TRAURIG, P.A. 1221 BRICKELL AVENUE MIAMI, FL 33131			COE, SUSAN D	
			ART UNIT	PAPER NUMBER
			1655	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/771,063

Applicant(s)

CORO, CARLOS M.

Examiner

Susan D. Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5 and 7-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5 and 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. The amendment filed July 5, 2005, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1-4 and 6 have been cancelled.
3. Claims 12-18 have been added.
4. Claims 5 and 7-18 are pending.

### ***Claim Objections***

5. Claim 13 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 13 does not properly further limit claim 12. Claim 12 is drawn to a composition "consisting of" an herbal extract in a water solution. The transitional phrase "consisting of" excludes any unrecited elements. Claim 13 improperly adds an additional ingredient to the composition of claim 12.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as

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the invention. As discussed above, claim 13 does not properly further limit claim 12. Thus, the scope of claim 13 is unclear.

***Claim Rejections - 35 USC § 102***

7. Claims 12 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,769,452.

US '452 teaches a composition containing only bloodroot and glycerin which is used for a breath spray. The extracts are then mixed with water (see column 3, "Phase Two" and lines 60-61). Bloodroot is a perennial herb (see column 1, lines 14-17). This herb grows naturally, so it would be "consistent with plant foliage that is found naturally in the game environment." The reference does not specifically teach that the spray is for use by hunters; however, since the reference composition is the same as the claimed composition, the reference properly anticipates the stated claims.

8. Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Castleman (The Healing Herbs (1991), Rodale Press: Pennsylvania, pp. 29, 30, 143-146 and 280-283).

Castleman separately teaches dandelion extracts and parsley extracts. Castleman teaches that dandelion leaves or roots are boiled in water to make a tea infusion (see page 146).

Dandelion leaves would naturally contain chlorophyll. Castleman also teaches that parsley leaves and seeds are boiled in water to make a tea infusion (see page 283). Parsley also would contain chlorophyll (see page 282). These two teas are considered to anticipate applicant's claim 12 because these two teas contain only dandelion or parsley in a water base. The reference does not specifically teach that the composition is a breath spray for hunters; however, since the

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reference composition is the same as the claimed composition, the reference properly anticipates the stated claims.

***Claim Rejections - 35 USC § 103***

9. Claims 5 and 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,350,435 in view of CN 1138467 (English abstract) and US Pat. No. 4,769,452 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the combination of the references does not teach the claimed invention because the claimed invention is drawn to a breath camouflage rather than a breath freshener. Applicant argues that the reference composition is not structurally the same as a breath camouflage because the reference composition contains ingredients such as mint that would be recognizable as a foreign scent. However, mint is a plant that grows in the wild. It is considered a plant that is "consistent with plant foliage that is found naturally." Thus, the reference composition is still considered to teach the stated claims. The reference composition comprises the same ingredients as claimed. Thus, the statement of intended use does not create a structural difference between the claimed composition and the composition taught by the combination of the references.

10. Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castleman.

As discussed above, Castleman teaches dandelion tea and parsley tea. These teas would contain chlorophyll. The reference does not specifically teach combining these teas together to make one tea. However, Castleman does teach that both teas are used for treating high blood

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pressure. It is well known that it is prima facie obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose in order to form a third composition which is useful for the same purpose. The idea for combining them flows logically from their having been used individually in the prior art. In re Pinten, 459 F.2d 1053, 173 USPQ 801 (CCPA 1972); In re Susi, 58 CCPA 1074, 1079-80; 440 F.2d 442, 445; 169 USPQ 423, 426 (1971); In re Crockett, 47 CCPA 1018, 1020-21; 279 F.2d 274, 276-277; 126 USPQ 186, 188 (1960).

Based on the disclosure by Castleman that these substances are used in compositions to treat high blood pressure, an artisan of ordinary skill would have a reasonable expectation that a combination of the substances would also be useful in creating compositions to treat high blood pressure. Therefore, the artisan would have been motivated to combine the claimed ingredients into a single composition. No patentable invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients. See In re Sussman, 1943 C.D. 518; In re Huellmantel 139 USPQ 496; In re Crockett 126 USPQ 186.

Castleman also does not specifically teach using glycerin in the tea composition. However, Castleman does teach that dandelion tea has a bitter taste. In the direction for making products, Castleman teaches sweetening the tea infusions (see page 30). Glycerin is a very well known sweetener that would be obvious for one of ordinary skill in the art to employ in sweetening the tea combination taught by Castleman.

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The references also do not specifically teach adding the ingredients in the amounts claimed by applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Thus, optimization of general conditions is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient to add in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of applicant's invention.

11. No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

*Susan D. Coe*

*9-15-05*

Susan D. Coe  
Primary Examiner  
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